

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BLUE SPIKE, LLC,

Plaintiff

v.

AUDIBLE MAGIC CORPORATION

Defendant

Civil Action No. 6:15-CV-00584-RWS-CMC

AUDIBLE MAGIC CORPORATION,

Counterclaim Plaintiff

v.

BLUE SPIKE, LLC, BLUE SPIKE, INC.
and SCOTT A. MOSKOWITZ

Counterclaim Defendants

BLUE SPIKE, LLC,

Plaintiff

v.

WIOFFER LLC, FACEBOOK INC.,
MYSPACE LLC, SPECIFIC MEDIA LLC,
PHOTOBUCKET.COM INC.,
DAILYMOTION INC., DAILYMOTION
S.A., SOUNDCLOUD INC.,
SOUNDCLOUD LTD., MYXER INC.,
QLIPSO INC., QLIPSO MEDIA
NETWORKS LTD., YAP.TV INC.,
GOMISO INC., IMESH INC., METACAFE
INC., BOODABEE TECHNOLOGIES
INC., TUNECORE INC., ZEDGE
HOLDINGS INC., HARMONIX MUSIC
SYSTEMS INC., BRIGHTCOVE INC.,
COINCIDENT.TV INC., ACCEDO
BROADBAND NORTH AMERICA INC.,
ACCEDO BROADBAND AB,
MEDIAFIRE LLC.

Defendants

Civil Action No. 6:15-CV-00585-RWS-CMC

STIPULATED DISMISSAL

WHEREAS, Plaintiff, Blue Spike LLC, Counter-Defendants Blue Spike Inc., and Scott A. Moskowitz (“Blue Spike entities”) and Defendants Audible Magic Corp., on behalf of itself and on behalf of its customers WiOffer LLC, Facebook Inc., Myspace LLC, Specific Media LLC, Photobucket.com Inc., Dailymotion Inc., Dailymotion S.A., Soundcloud Inc., Soundcloud Ltd., Myxer Inc., Qlipso Inc., Qlipso Media Networks Ltd., Yap.tv Inc., GoMiso Inc., Imesh Inc., Metacafe Inc., Boodabee Technologies Inc., Zedge Holdings Inc., Harmonix Music Systems Inc., Brightcove Inc., Coincident.tv Inc., Accedo Broadband North America Inc., Accedo Broadband AB and MediaFire LLC (the “Defendants”) (collectively the foregoing are the “Parties”), have agreed to resolve this litigation and have agreed to stipulated dismissal of the claims, counterclaims and causes of action between them;

WHEREAS, the Blue Spike entities and its heirs and assigns agree not to sue Audible Magic again or its customers for making, using, selling, offering for sale or importing an Audible Magic product or service;

WHEREAS, pursuant to this stipulation, Audible Magic’s products and services do not and have not infringed any patents owned or controlled by the Blue Spike entities, including but not limited to U.S. Patent Nos. 7,346,472; 7,660,700; 7,949,494; and 8,214,175;

WHEREAS, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Blue Spike LLC stipulates to dismissal with prejudice of its patent infringement claims against each and all of the Defendants;

WHEREAS, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Audible Magic stipulates to dismissal with prejudice of its counterclaims against each and all of Blue Spike LLC, Blue Spike Inc., and Scott A. Moskowitz;

WHEREAS, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the Defendants

stipulate to dismissal without prejudice of their declaratory judgment counterclaims in this litigation, if any, against Blue Spike LLC;

WHEREAS, notwithstanding the foregoing, Blue Spike LLC, Blue Spike Inc., Scott A. Moskowitz, on behalf of themselves and their heirs and assigns, and Facebook Inc. expressly agree and stipulate that (1) neither the entry of the stipulated dismissal of Blue Spike LLC's infringement claims nor the dismissal of any of the Defendants' counterclaims or defenses in the above-captioned case shall in any way waive any right of Facebook Inc. or its affiliates, subsidiaries or successors-in-interest (hereafter collectively referred to as "Facebook") to assert the same or similar counterclaims or defenses or to assert any other claim, counterclaims or defenses, in any other litigation between Blue Spike LLC, Blue Spike Inc., Scott A. Moskowitz (or their heirs and assigns) and Facebook, (2) the claim construction order in this case is not binding in any way on Facebook (under the doctrine of claim preclusion, issues preclusion, or any other legal or equitable doctrine) in any other litigation between Blue Spike LLC, Blue Spike Inc., Scott A. Moskowitz (or their heirs and assigns) and Facebook, and (3) the instant dismissal in this case shall have no res judicata or collateral estoppel effect as to any claim, counterclaim, or defense of Facebook in any other litigation between Blue Spike LLC, Blue Spike Inc., Scott A. Moskowitz (or their heirs and assigns) and Facebook;

WHEREAS, the parties shall bear their own attorneys' fees, expenses and costs;

WHEREAS, in view of this stipulated dismissal, the parties agree to dismissal of the claims and counterclaims on the terms herein, agree to entry of the Proposed Order of Dismissal attached hereto as **Exhibit 1** and agree that the Clerk of the Court be ordered to close the following cases:

- *Blue Spike LLC v. Audible Magic Corp. et al.*, 6:15-cv-584-RWS-CMC, and
- *Blue Spike LLC v. WiOffer, LLC et al.*, 6:15-cv-585-RWS-CMC

Dated: July 1, 2016

By:

/s/ Randall T. Garteiser

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Technologies Inc., Zedge Holdings Inc.,
Harmonix Music Systems Inc., Brightcove Inc.,
Coincident.tv Inc., Accedo Broadband North
America Inc., Accedo Broadband AB and
MediaFire LLC

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document, *via* electronic mail on this the 1st day of July, 2016.

/s/ Eric H. Findlay

Eric H. Findlay